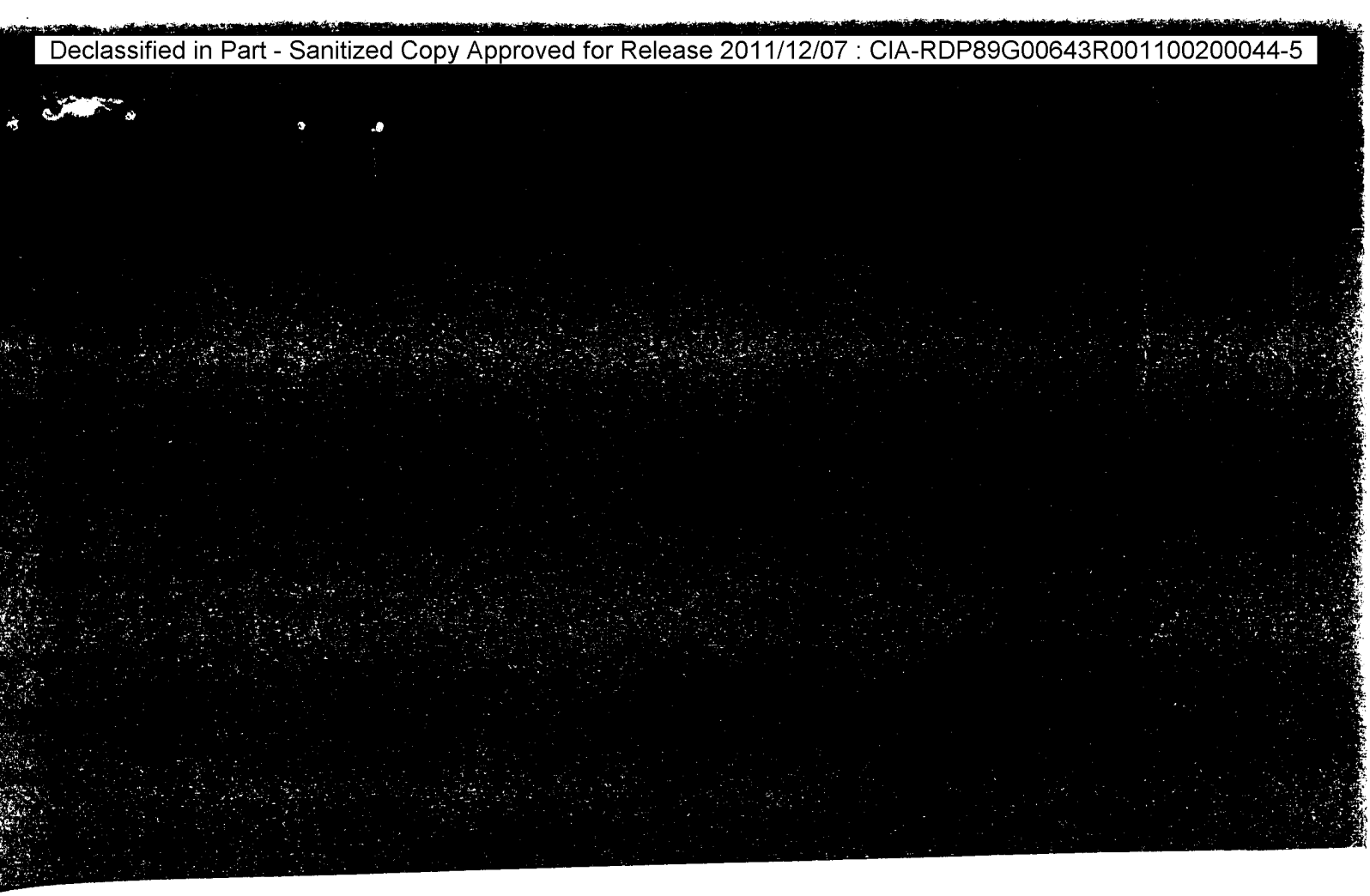

Stopgap Bill, Including Contra Aid, Clears

Congress on Sept. 25 completed legislation funding federal programs, including humanitarian aid to Nicaraguan contras, through Nov. 10.

The stopgap measure (H J Res 362) provides no additional military aid to the contras after the new fiscal year begins Oct. 1. However, money already obligated would continue flowing to the insurgents until the previous $100 million appropriation is exhausted. (Related story, p. 2597)

The House approved H J Res 362 Sept. 25 on a 270-138 vote after a short debate. Two days later, the Senate, bypassing committee action, cleared the measure for the president. The vote in the Senate was 76-23. (House vote 342, p. 2548)

The legislation, known as a continuing appropriations resolution, is needed because Congress has not completed any of the regular fiscal 1988 appropriations bills. These bills are supposed to be enacted before the new fiscal year. When the Senate cleared the continuing resolution, that chamber had passed one of the 13 regular bills; the House had passed 10. (Status of appropriations, p. 2554)

With two exceptions, H J Res 362 is the same as the version reported Sept. 17 by the House Appropriations Committee. It continues most federal programs at levels of spending appropriated for fiscal 1987; however, foreign operations accounts would get the fiscal 1987 appropriation or the president's 1987 budget request, whichever is lower.

The House adopted amendments adding $67 million in humanitarian aid for the contras and waiving a restriction on appropriations for intelligence activities until such activities receive congressional authorization.

The amendments were part of the rule (H Res 270) for consideration of H J Res 362 and were adopted when the House accepted the rule by voice vote. The contra funding reflected an agreement by Speaker Jim Wright, D-Texas, and Republican Leader Robert H. Michel of Illinois. The committee bill had explicitly ruled out new funding for either humanitarian or military aid to the Nicaraguan insurgents. (Weekly Report, p. 2597)

Chief Democratic Whip David E. Bonior of Michigan told the House that the money was included to avoid a partisan congressional battle that could disrupt a Central America peace plan.

Bonior called the administration's Central America policy a failure and said the money provided the contras "with the means to disengage." Michel countered, advising members to be skeptical of recent moves by the Nicaraguan government to lift censorship of opposition media and impose a limited a cease-fire.

—By Elizabeth Wehr

Doubtful Congress Clears Gramm-Rudman Fix

A dubious Congress sent President Reagan a new version of the Gramm-Rudman-Hollings anti-deficit law on Sept. 23.

The legislation, attached to a 20-month extension (H J Res 324) of the federal debt ceiling, eases the Gramm-Rudman deficit targets of the 1985 law and promises a balanced budget by fiscal 1993, two years later than the original law. It revives an automatic spending-cut procedure to be triggered if Congress and the president fail to meet the deficit targets by conventional legislation.

The law's original automatic procedure was struck down in 1986 by the Supreme Court.

The conference agreement on the legislation was approved Sept. 22 by the House on a 230-176 vote. The following day the Senate, 64-34, cleared the measure for the president. *(Provisions, p. 2310; House vote 330, p. 2348, Senate vote 262, p. 2350)*

By the week's end it was not clear whether Reagan would sign or veto the bill. Debate among White House advisers mirrored conflicts in Congress. *(Related story, p. 2310)*

The only benefit on which all agreed was the bill's long-lasting increase in the debt ceiling from $2.1 trillion to $2.8 trillion. That is enough borrowing authority to last through May 1989. The extension would confer a much-needed stability on the government's financing of the debt by postponing, until after the 1988 elections, the political maneuvers that traditionally delay debt legislation.

In the White House as in Congress, opponents of the bill warned that critical federal programs, notably defense, would be crippled in fruitless attempts to balance the budget. On the other side were those, such as Treasury Secretary James A. Baker III, who warned that a veto would be a political embarrassment and a fiscal disaster, because it would be difficult to extract another debt measure from a rolled Congress.

A temporary increase in the debt ceiling expired Sept. 23. If no additional borrowing is authorized the government faces unprecedented default by the first days of October.

On Capitol Hill, opponents, including Sen. Pete V. Domenici, R-N.M., once a strong supporter of Gramm-Rudman, said the deficit-cutting measure wouldn't work.

Its authors insisted that the renewed threat of harsh cuts would force the White House and Congress to compromise on an alternative.

Still, most who voted for the bill were less convinced than in 1985, when Gramm-Rudman was swept into law on a tide of anger against the budget deficit and against the failure of Congress and the president to come to grips with it. Then many said that the threat of automatic spending cuts would surely end the Congress-White House impasse.

> ***The anti-deficit bill "is not worse than doing nothing. But I am not very confident of my opinion."***
>
> **—Sen. William L. Armstrong, R-Colo.**

But now there is a pervasive belief that the deadlock will continue until Reagan leaves office, because the president will block the tax increases that many influential members believe are critical to balance the budget.

The widespread certainty that Reagan will never bend to new taxes feeds fear that he would let automatic cuts occur instead and blame Congress for the resulting harm.

The somber mood in Congress seemed best expressed by Sen. William L. Armstrong, R-Colo., who lectured the Senate on what he considered grave faults in the bill. Still, Armstrong concluded, "it is not worse than doing nothing. But I am not very confident of my opinion."

Retreat . . .

The final version of Gramm-Rudman was negotiated privately by a handful of House and Senate conferees meeting the first week in August and again after Congress returned Sept. 9 from its August break. *(Background, Weekly Report p. 2234)*

It represented a significant step back from the promises of the original law and from the more modest expectations of the budget resolution (H Con Res 93) Congress passed earlier this year.

Throughout the conference negotiations and final congressional action on the measure, White House officials insisted that no legislation should force Reagan to choose between taxes and disruptive, automatic cuts in defense. That, of course, was the basic strategy of all but committed congressional opponents of a tax increase.

The White House also maintained that Reagan himself had no position on the matter.

In 1985, Reagan enthusiastically embraced Gramm-Rudman, although, upon its enactment, the president's lawyers promptly asked the courts to void the automatic spending-cut mechanism. Then, as now, Defense Secretary Caspar W. Weinberger and Secretary of State George P. Shultz fought fiercely against the legislation, warning of its impact on Defense and State Department programs.

Many in Congress expect Reagan to accept the legislation, despite its evident difficulties. They cite the powerful incentive of the long debt-limit extension, the awkwardness of opposing legislation that claims to balance the budget and the fact that the new version is comparatively easy to live with, at least for fiscal 1988 and 1989.

. . . Or Realism?

If the new Gramm-Rudman is somewhat easier for the president, it also lets up a little on Congress in the next two years. Its authors maintain that the changes recognize political realities that would guarantee failure under the more stringent original.

The new version's deficit targets are substantially higher than those of the 1985 version, and, for fiscal 1988 and 1989, there are limits on how

—*By Elizabeth Wehr*

After Gramm-Rudman: Now What?

What Congress does next in its tortured budget process depends on whether President Reagan signs or vetoes the rewrite of the Gramm-Rudman-Hollings anti-deficit law.

Much money-related legislation hangs in the balance. Appropriations for the fiscal year beginning Oct. 1 must be completed. Budget reconciliation legislation, making the $23 billion in savings mandated by the Gramm-Rudman bill (H J Res 324), should be enacted. And a successful veto would require members to produce another increase in the federal debt ceiling, because the Gramm-Rudman changes are part of needed debt legislation.

If Gramm-Rudman becomes law, reconciliation is next. The House Ways and Means Committee plans to begin working on its part of that bill, including a tax increase, on Oct. 1.

H J Res 324 supplants the fiscal 1988 budget resolution, which earlier this year required Congress to reduce the deficit by $37 billion. Of that, $19.3 billion was to be new taxes.

Under H J Res 324, the savings come down to $23 billion. But authorizing and appropriations committees aren't off the hook. The new legislation rules out $7 billion in revenues from early payment of Rural Electrification Administration loans, revenues included in the budget resolution's $37 billion total. Members working on Gramm-Rudman subtracted another $7 billion by agreeing on a smaller tax increase to raise about $12 billion. Authorizing panels must still produce about $4 billion in savings assumed in the budget resolution, and appropriators must still trim expenditures by about $3.7 billion as their part of the new, $23 billion total.

If reconciliation is not law by Oct. 20, automatic spending cuts would go into effect, becoming permanent a month later if alternative savings are still lacking. Given Reagan's continued aversion to taxes, a presidential veto of a tax-bearing reconciliation bill seems certain to many members and an override probably impossible.

Sen. Warren B. Rudman, R-N.H., says the new Gramm-Rudman legislation will avert disaster because the risks of failure are too large. But others fear that several months from now, Congress will find itself bereft, by veto, of any hope for a tax increase and beset by pressures to protect defense and domestic programs, Gramm-Rudman notwithstanding.

much would be cut under the automatic process. Moreover, complex changes in accounting methods also ease the impact of automatic cuts.

The fiscal 1988 budget resolution called for Congress to reduce the deficit by $37 billion through cuts in spending and a tax increase of $19.3 billion.

With that level of deficit reduction, the remaining deficit would still have exceeded the original $108 billion 1988 Gramm-Rudman target by more than $25 billion.

Under the new Gramm-Rudman, $23 billion in deficit reduction would be required, leaving a deficit as high as $160 billion by some estimates. The new version sets a fiscal 1988 target of $144 billion, but also specifies that automatic cuts will be no more than $23 billion and that the automatic procedure can be avoided if $23 billion is saved in some other way.

The $23 billion in deficit-reduction measures is to be enacted in budget-reconciliation legislation that was delayed until the Gramm-Rudman changes were complete.

Sen. Lloyd Bentsen, D-Texas, who helped negotiate the Gramm-Rudman rewrite, told reporters that "this is a tougher $23 billion, a harder $23 billion" to achieve. That is because the legislation would rule out several of the temporary savings schemes Congress has used to claim compliance with deficit targets.

Revenues from sales of assets such as loans and receipts from early repayments of federal loans could no longer be counted in determining compliance with Gramm-Rudman.

Also, one of the most difficult aspects of Gramm-Rudman would remain unchanged by the new version. Although some still advertise the automatic cuts as "across the board," that is not the case. Roughly two-thirds of the federal budget is either spared from automatic cuts altogether or shielded, as in the case of Medicare, by rules limiting the size of cuts. That means that roughly a third of federal programs bear the full brunt of automatic cuts.

Provisions

- Raise the permanent federal debt limit to $2.8 trillion, from $2.1 trillion, enough to last through May 1989. A temporary $2.352 trillion ceiling had been in effect through Sept. 25.
- Establish, for fiscal years 1988-93, an automatic spending-cut ("sequester") procedure to reduce the estimated deficit to specified targets.

Each year, the Congressional Budget Office (CBO) and, five days later, the Office of Management and Budget (OMB), would issue reports on the size of the estimated deficit for the coming fiscal year, the amount that federal spending must be reduced to reach the deficit target for the year, and the uniform percentage by which program accounts must be reduced to achieve the required reduction.

OMB would be required to "give due regard" to the CBO report and to explain differences between its report and CBO's. The two agencies would have to observe specific restrictions on economic and technical assumptions used in making deficit estimates, and on distribution of the percentage cuts.

The president would twice issue the OMB report as an order making the spending cuts. The first time the order would temporarily halt spending. If legislation were not enacted after the first order to meet the deficit target by other means, CBO and OMB would again report and the second OMB report, issued by the president, would make the spending cuts permanent. The second version would reflect savings made in the interim. The legislation explicitly authorizes changes or cancellation of the final order by joint resolution under a special expedited procedure.

- Revise schedules for the automatic-cut procedure, as follows: for fiscal 1988 only, Oct. 31, the "snapshot" date by which spending and revenue laws and final regulations must be in effect to be counted by OMB and CBO in making the deficit and automatic-cut estimates; also the date by which the president must notify Congress if he intends to adjust military spending in the automatic cut order as permitted by the bill, Oct. 15; CBO report, Oct. 20; OMB report to the president and to Congress and the date the report goes into effect, with holding funds retroactive to Oct. 1.

Nov. 15, second CBO report, showing any changes in spending and revenues that have become final; Nov. 20, final OMB report to the president and to Congress and the date the reported spending cuts become permanent cancellations in spending authority. Within five days after the cuts go into effect, any joint resolution affirming the defense-spending modifications as proposed by the president must be introduced. Within 10 days after the cuts go into effect, any joint resolution revising the final order must be introduced.

For years after fiscal 1988, the schedule is: Aug. 15, presidential notification on military accounts and "snapshot" date; Aug. 20, CBO report; Aug. 25, OMB report; and president issues order, to become effective Oct. 1; Oct. 10, second CBO report; Oct. 15, final OMB report, effective immediately.

The timing of joint resolutions following the final order is the same for all years.

- Retain the overall composition of the automatic cuts, with half from defense and half from non-military programs, and exempt Social Security, interest payments on the federal debt and certain poverty programs. Reductions in Medicare would continue to be limited to 2 percent. The bill also restates various exemptions enacted in other legislation and clarifies an exemption for the Commodity Supplemental Food Program.
- Establish federal budget-deficit targets as follows: for fiscal 1988, $144 billion; fiscal 1989, $136 billion; fiscal 1990, $100 billion; fiscal 1991, $64 billion; fiscal 1992, $28 billion; fiscal 1993, zero.

A $10 billion margin of error is allowed for all years except fiscal 1993, meaning that the automatic spending-cut provision is supposed to be triggered only if a deficit estimate exceeded the target by more than $10 billion. Thus, the real targets are $154 billion, $146 billion, $110 billion, $74 billion, $38 billion and zero.

The automatic process is designed to reduce the estimated deficit to the target, but there are exceptions for fiscal years 1988 and 1989.

For 1988, the automatic cuts could be avoided with a total of $23 billion in budgetary savings, subtracted from total spending for programs as provided by current law, with adjustments for inflation and for changes in program participation.

Cuts under the automatic procedure would be limited to $23 billion, even if they failed to get the deficit down to the target.

For 1989, the automatic cuts would be triggered by a deficit estimate exceeding the target by more than $10 billion, but the cuts would be either the amount needed to reach the target or $36 billion from current spending (adjusted for inflation and program participation) — but no more than $36 billion.

Original Gramm-Rudman targets were, for fiscal 1988, $171.9 billion; 1987, $144 billion; 1988, $108 billion; 1989, $72 billion; 1990, $36 billion; 1991, zero, with a $10 billion margin of error for all years except the last.

- Revise the method of calculating the spending total ("baseline") used to estimate the deficit and from which the cuts are to be subtracted in the automatic process.

The effect of the change is to ease the impact of the automatic cuts by enlarging the base to be cut.

Under the original law, the baseline was to reflect spending and revenues resulting from laws and final regulations in effect at specific dates. For any appropriations that were not finished for the coming fiscal year, the spending level was to be the amount appropriated for the previous fiscal year, with no allowance for costs of inflation in the coming year or for changes in rates of participation in federal programs.

In the new version, allowances for inflation (specified in the bill) and for changes in participation rates could be added to the previous year's appropriated levels.

Also, if a continuing appropriations resolution covering less than a full year is in effect at the time of an automatic-cut order, the baseline would reflect spending levels of the resolution, prorated for the duration of the spending-cut order.

A continuing resolution provides appropriations for part or all of a year; funding levels usually reflect amounts set by the previous year's appropriation or by partially completed bills for the fiscal year in question, or combinations of both.

The bill also specifies that certain expenditures, including advanced price-support ("deficiency") payments to farmers, be assumed in the baseline.

- Permit the president, in the spending-cut order, to deviate from uniform percentage reductions in military accounts. For personnel expenditures, the president could exempt all or part from cuts if an equivalent amount were subtracted from other defense programs, and if he notified Congress of this change.

For non-personnel accounts, the president could cut less from some accounts and more from others, but only if Congress approved under special expedited procedures. None of these accounts could be increased above the appropriated level, however, and the aggregate defense reduction could not change.

- Impose new restrictions on what may be counted as budgetary savings for purposes of complying with Gramm-Rudman. Receipts from the sale of federal assets such as loans and from early "prepayment" of loans, including those of the Rural Electrification Administration, could not be counted. Also not counted would be temporary savings from shifting government actions, such as a military payday, from one fiscal year to the next.
- Prohibit Senate consideration of a budget resolution based on more than one set of economic and technical assumptions, as occurred in both the House and Senate in 1987 when each chamber used optimistic assumptions to claim compliance with Gramm-Rudman.
- Continue for the duration of the bill a Senate rule barring extraneous provisions from the Senate version of budget-reconciliation legislation. Also bar from Senate reconciliation bills provisions increasing federal spending in future years even though they are within budget limits for the years covered by reconciliation. Reconciliation bills implement deficit-reducing changes in program authorizations and revenue laws, as assumed in the budget resolution.
- Affirm court decisions that the president may defer spending appropriated funds only for reasons of fiscal policy.
- Specify that a 60-vote majority would be required to overturn Senate rulings on Gramm-Rudman points of order that can be waived only by a 60-vote majority. Existing practice permits the rulings to be overturned with a simple majority.
- Recommend development of a plan for experimental two-year appropriations for certain agencies; direct CBO, with consultations from the General Accounting Office, to report on certain aspects of federal credit programs.

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If there is an extended delay in confirming a successor to retired Justice Lewis F. Powell Jr., the court may deadlock, 4-4, on important issues.

response to a shameful history of exclusion, segregation, inadequate education and expulsion of handicapped children."

Food Stamps

Food stamp advocates in the House and Senate will be closely watching a case challenging the law allowing the government to deny food stamps to a household when one member is on strike.

The case is *Lyng v. International Union, United Automobile Aerospace & Agricultural Implement Workers of America, UAW et al.*, and concerns the validity of the strike language, which was added to the Food Stamp Act in 1981. The highly controversial amendment floated around Congress for years and finally was adopted as part of a massive budget "reconciliation" bill (PL 97-35).

The federal district court in Washington, D.C., ruled the provision unconstitutional because it did not rationally further a legitimate governmental purpose.

Fried, arguing for the Agriculture Department, which handles the food stamp law, charged that the lower court "improperly second-guesses the complex choices made by Congress when it amended the Food Stamp Act." Fried said it was appropriate for Congress to "remove itself from labor disputes by withdrawing benefits that it thought were more appropriately provided by union strike funds."

If the high court upholds the strike provision, opponents in Congress are likely to introduce legislation to remove it from the Food Stamp Act.

Homosexual Rights

In another case of interest to Congress, the court in June agreed to review a decision that could help define the constitutional rights of homosexuals and the authority of the CIA director to fire people.

Members will be paying attention to this case for guidance on homosexual rights and, in the wake of the Iran-contra affair, the limits of accountability of the CIA.

The case, *Webster v. Doe*, involves the firing of a CIA employee known only as John Doe, who told his superiors that he was a homosexual. He challenged his firing, claiming that he posed no security risk and noting that his work had been considered exemplary. He asked to be told why he was fired, but his request was refused.

The CIA claimed that Doe's case was not subject to judicial review, but the D.C. appeals court disagreed. The court sent the case back to the district court to gather more evidence about whether the CIA has a policy barring employment of someone who is a homosexual or because of homosexual conduct.

The government appealed to the Supreme Court contending that the CIA director's decision to fire someone is not reviewable. To allow judicial review, Fried said, would undermine the CIA director's ability to run his agency. But Doe contended the case is not about the director's discretion, but whether the CIA has a policy of denying work to homosexuals and whether this policy is unconstitutional.

Exclusionary Rule

The court last addressed the so-called "exclusionary rule" in 1984, when it created two exceptions to the general proposition that evidence gathered by police in violation of the Fourth Amendment must be excluded at a criminal trial. The Fourth Amendment bars unreasonable searches and seizures.

The exclusionary rule was first developed by the court in 1914 to deter police misconduct. For years, some law enforcement officers chafed under the doctrine, convinced it hampers police work and allows guilty people to go free.

Conservative members of Congress have sought to ease the rule but have been unsuccessful.

The court took much of the energy out of the congressional debate in 1984, when it approved modifications to the rule. In one case it carved out a "good faith" exception in cases where an officer had obtained a warrant, seized evidence and then learned that the warrant was defective. In the other, it eased the rule in situations where the evidence improperly obtained would have inevitably been discovered anyway. (*1984 Almanac* p. 227)

The justices accepted two drug cases for argument this year that may offer a new refinement of the exclusionary rule. The issue in *Murray v. U.S.* and *Carter v. U.S.* is the legality of a search and seizure of property with a warrant when that warrant came after a previously illegal search.

In the cases, the police discovered evidence of drug offenses during an illegal search of a warehouse. After discovering the evidence, they went to a magistrate, ob
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In seeking a deal to ban chemical weapons, "to go to the Soviet Union empty-handed is the wrong message at the wrong time."
—Sen. Richard C. Shelby, D-Ala.

motion, was 49-48. *(Vote 269, p. 2350)*

But the closeness of that vote reflected longstanding doubts about the weapon's technical effectiveness, rather than Senate sentiment about nerve gas. Long a leading opponent of binary-weapons production, Pryor included in his amendment this year provisions that would have begun development of a new chemical weapon for the missions currently assigned to the Bigeye. "I am not a big fan of chemical weapons," Pryor said, "but I am a big fan of making good weapons."

INF Treaty

By a vote of 62-28, the Senate killed an amendment by Jesse Helms, R-N.C., putting conditions on the pending U.S.-Soviet INF missile treaty. *(Vote 271, p. 2351, related story, p. 2296)*

Helms' amendment declared that no such treaty should be ratified by the Senate unless:

- Soviet compliance can be verified "unquestionably."
- The Soviets stop violating the 1972 U.S.-Soviet treaty limiting anti-ballistic missile weapons. It is generally believed by U.S. experts that a huge radar at Krasnoyarsk in Siberia violates the accord. *(Weekly Report p. 2230)*

Some leading conservatives have complained that the Reagan team has softened its stance on verification standards and past Soviet violations for the sake of reaching the agreement "in principle" on an INF treaty. Carl Levin, D-Mich., denounced Helms' move as "a treaty-killer amendment before the treaty is even born."

Missile Deployments

By a vote of 51-33, the Senate Sept. 18 tabled a Helms amendment ordering the Air Force to replace 50 single-warhead Minuteman II intercontinental missiles with triple-warhead Minuteman IIIs. *(Vote 257, p. 2345)*

The Minuteman IIIs are now being removed from their launchers to make room for 50 larger MX missiles, which carry 10 warheads apiece.

Helms noted that the swap would add 200 fairly accurate nuclear warheads to the U.S. arsenal at little cost.

However, hard-line critics of the 1979 U.S.-Soviet strategic arms limitation treaty (SALT II) long have urged the deployment of additional multi-warhead land-based missiles for another reason: It would break one of the ceilings set by the treaty, which the critics believe favors the Soviet Union.

In November, Reagan dropped his policy of informally observing the limits set by the unratified SALT II, but no planned U.S. deployment would break the limit on multiple-warhead missiles, as would Helms' amendment.

Other Amendments

Also adopted were amendments:

- By Steve Symms, R-Idaho, calling for abrogation of the 1972 U.S.-Soviet agreement under which each country has built a new embassy in the other's capital. Symms' amendment also called for negotiation of a new agreement requiring the Soviet Union to build a new embassy in a relatively low-lying part of Washington. The newly built Soviet chancery, unoccupied as yet, is on one of the highest sites in Washington, a fact which some critics fear will enhance Soviet ability to eavesdrop on secret U.S. communications in the capital. Approved Sept. 24 by 70-27. *(Vote 265, p. 2350, background, Weekly Report p. 1427)*

The Senate adopted a similar, non-binding resolution (S Res 261) on July 30. *(Weekly Report p. 1766)*

- By Frank R. Lautenberg, D-N.J., allowing uniformed military personnel to wear "neat and conservative" religious apparel. The amendment would overturn a 1986 Supreme Court decision that the military can prohibit an Orthodox Jew from wearing a yarmulke, or skullcap. Last year, the Senate tabled Lautenberg's amendment; this year it passed 55-42 on Sept. 25. ■

Staff writer Steven Pressman contributed to this story.